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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,374	04/01/2004	Christoph Becke	2001P14043WOUS	9753

46726 7590 05/04/2006

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EXAMINER

HANSEN, JAMES ORVILLE

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/816,374	BECKE ET AL.	
	Examiner	Art Unit	
	James O. Hansen	3637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on April 11, 2006 & September 8, 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 7,8,15 and 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-14,17 and 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. Applicant's request for reconsideration of the amendment after Final filed April 11, 2006 is persuasive and, therefore, the finality of the November 10, 2005 Office Action is withdrawn in view of the following action.

Election/Restrictions

2. Newly submitted claims 15-16 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The examiner has taken the position that claims 15-16 read on a non-elected species in accordance with applicants withdrawal of claims 7-8 in the response filed December 27, 2004.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 15-16 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the

Art Unit: 3637

United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2 & 4-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Olsson [U.S. Patent No. 3,220,558]. Olsson (figures 1-6) teaches of a storage compartment for a refrigerator door, the compartment comprising: a box-shaped body (316 along with 14 for example) having a longitudinal wall (318b) and a given depth; and a compartment divider (319) attached to the wall and extending over more than half of the given depth (fig. 6), the divider defining a chamber (at areas 22) capable of holding small items. The divider being capable of extending substantially entirely over the given depth (note fig. 1 for example). The compartment having at least one sidewall (see notched sections of the sidewall – fig 1.) with a concave shape (top of the notch) in a direction of the given depth. The chamber having an open base (note fig. 3). The divider having a given height that is less than that of the box-shaped body (when not attached to the body).

5. Claims 1-3 & 6 are rejected under 35 U.S.C. 102(b) as being anticipated by European publication 611,930 [EP'930]. EP'930 (figures 1-5) teaches of a storage compartment for a refrigerator door, the compartment comprising: a box-shaped body (2 – fig. 1) having a longitudinal wall (5) and a given depth; and a compartment divider (11) attached to the wall and extending over more than half of the given depth (fig. 2), the divider defining a chamber (23) capable of holding small items. The divider being capable of extending substantially entirely over the given depth. An extent of the divider in a direction of the given depth of the body being greater than in a width direction. The divider having a given height that is less than that of the box-shaped body (note rear wall for example).

6. Claims 1-6, 9-14 & 17 are rejected under 35 U.S.C. 102(b) as being anticipated by German publication 9014463 [DE'463]. DE'463 (figures 1-4) teaches of a storage compartment for a refrigerator door, the compartment comprising: a box-shaped body (20) having a longitudinal wall (rear wall 24) and a given depth; and a compartment divider (31) [as to claim 9 – the compartment divider may be member 22 or 31] attached to the wall and extending over more than half of the given depth (fig. 6), the divider defining a chamber (on each side of the divider) [as to claim 9 – the chamber is 30 see fig. 3] capable of holding small items. The divider being capable of extending substantially entirely over the given depth (note fig. 2 for example). An extent of the divider in a direction of the given depth of the body being greater than in a width direction. The compartment having at least one sidewall (note the sides of the divider near the section where part 31 and part 22 meet) with a concave shape in a direction of the given depth. The chamber having an open base (note fig. 2). The divider having a given height that is less than that of the box-shaped body (fig. 4). The divider having a rider (downward portion – element 23) extending downwardly spaced from a wall thereof (top wall portion) located adjacent to a slot (25) extending vertically within the longitudinal wall (see fig. 4), for holding the divider attached within the body. The slot and the rider are sized to form a friction lock between the rider and walls of the body defining the slot as readily apparent to the examiner, and wherein the divider is defined by four connected walls (back wall, 2 curved side walls, front wall) which do not extend to a bottom of the body to define the chamber.

7. Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Japanese publication 2001-116439 [JP'439]. JP'439 (figures 1-5) teaches of a storage compartment for a refrigerator door, the compartment comprising: a box-shaped body

(2) having a longitudinal wall (either front or rear wall) and a given depth; and a compartment divider (3 or 4) attached to the wall and extending over more than half of the given depth (fig. 3), the divider defining a chamber (two chambers shown) capable of holding small items. The divider being capable of extending substantially entirely over the given depth (note fig. 2 for example). An extent of the divider in a direction of the given depth of the body being greater than in a width direction. The compartment having at least one sidewall (note the two sides of the chamber for example) with a concave shape in a direction of the given depth. The chamber having an open base (note fig. 3). The divider having a given height that is less than that of the box-shaped body (fig. 3).

8. Claims 9-11, 13-14 & 17-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Belcher et al., [U.S. Patent No. 3,353,704]. Belcher (figures 1-8) teaches of a storage compartment (fig. 4) capable of being associated with a refrigerator door, the storage compartment comprising: box shaped body (10) having a longitudinal wall (12) and a given depth with a slot (17 – note fig. 6) extending vertically within the longitudinal wall at least along a portion thereof; and a compartment divider (note fig. 2) having a rider (30) extending downwardly spaced from a wall thereof (the recitation “downwardly spaced” may be interpreted broadly depending upon the viewed orientation of the structure) located adjacent to the slot for being received within the slot (fig. 7) for holding the compartment divider attached within the box shaped body, and the compartment divider defining a chamber (any chamber will suffice – fig. 2) for holding small items and extending over more than half of the given depth. As to claim 10, the compartment divider extends substantially entirely over the given depth as readily apparent to the examiner. As to claim 11, the

compartment divider in a direction of the given depth of the box-shaped body is greater than in a width direction [when viewed from right to left in the drawings]. As to claim 13, the chamber has an open base as readily apparent to the examiner (fig. 2). As to claim 14, the compartment divider has a given height that is less than the height of the box-shaped body (note fig. 8 for example – the height of the body is higher than the height of the divider). As to claim 17, the slot and rider are sized to form a friction lock between the rider and walls of the box shaped body defining the slot (figures 4 & 6 for example). As to claim 18, the compartment divider is defined by four connected walls (any of four walls as shown in fig. 2 that form a closed chamber) which do not extend to a bottom of the box shaped body (as depicted in figs. 7-8 – the walls may be viewed as not extending to a bottom of the body i.e., the bottom is below a bottom wall which is below the walls) to define the chamber for holding items therein, and an open bottom for allowing items held therein to rest on a bottom of the box shaped body.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE`463 in view of JP`439. DE`463 teaches applicant's inventive claimed structure as disclosed above, including the divider having four connected walls (fig. 2) which do not extend to a bottom of the body (fig. 3) and define the chamber; but DE`463 does not show an "open bottom" associated with the divider. JP`439 is cited as an evidence

reference to show that it was known to insert a divider (4) having an open bottom into a boxed shaped body (2) for the purpose of allowing items (6) placed within the divider to pass through the divider. Accordingly, the position is put forth that one of ordinary skill in the art would deem obvious to incorporate an open bottom divider within a box shaped body in view of JP'439 teachings since the open bottom allows items held within the divider to pass through, thereby maximizing the space capacity since longer items may be inserted beyond the bottom limits of the divider and still held in place.

Response to Arguments

11. Applicant's arguments filed September 8, 2005 have been fully considered but they are not persuasive. In response to applicant's remarks concerning the applied prior art references note the following. The position is taken that the cited references adequately address the claimed limitations as structurally set forth. As to the characterization of the terms "depth" and "chamber" within the body, the examiner notes that the dimensional direction of "depth" is being viewed as the direction from a front of the body to a back of the body. A "width" direction would be viewed as the direction from side to side of the body, while a "height" direction would be viewed as the direction from a bottom to the top of the body. As such, the characterization of "depth" within the claims is believed to have been met by the references. As to the "chamber" recitations, it is viewed that the references each depict a "chamber" in as much as applicant's embodiments depict the claimed feature, in view of how the "depth" limitation is being interpreted [when comparing a top view of fig. 7 with top views of the prior art references].

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). Applicant's amendment [new claims] necessitated the new ground(s) of rejection presented in this Office action

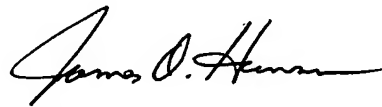
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Warwick and Swingley Jr., describe box shaped bodies with dividers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James O. Hansen whose telephone number is 571-272-6866. The examiner can normally be reached on Monday-Friday between 8-4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James O. Hansen
Primary Examiner
Art Unit 3637

JOH
May 2, 2006